

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Case No. 16-39654
	)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
	)	Chapter 7
Debtors.)	
	)	Hon. Deborah L. Thorne
)	
	)	Hearing Date: May 20, 2021 at 9:30 a.m.
)	

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on May 20, 2021 at 9:30 a.m., I will appear before the Honorable Deborah L. Thorne, or any judge sitting in her place, and present the *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 Approving Settlement with Eric Schnosenberg*. Parties-in-interest may obtain a copy of the Motion by contacting undersigned counsel.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID and password for this hearing will be provided by chambers at a later date. These credentials can also be found on the judge's page on the court's web site, at <https://www.ilnb.uscourts.gov/content/judge-deborah-l-thorne>.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

Dated: April 26, 2021

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Elizabeth L. Janczak
One of Her Attorneys

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IN RE:)	Case No. 16-39654
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CERTIFICATE OF SERVICE

I, Elizabeth L. Janczak, an attorney, hereby certify that on April 26, 2021, I caused a true and correct copy of the foregoing *Notice of Motion* and *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 Approving Settlement with Eric Schnosenberg*, to be filed with the Court and served upon the following parties by the manners listed.

/s/ Elizabeth L. Janczak

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Label Matrix for local noticing

0752-1

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Yorba Linda, CA 92886-4058

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William Harris

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Paris, IL 61944-1037

Wolfe, Raviv

571 Vernon Woods Dr.

Valparaiso, IN 46385-9106

Woodworth, Allison J

516 W Melrose St Apt 306

Chicago, IL 60657-3787

Yodlee

Lockbox Dept CH 17505

Palatine, IL 60055-7405

Zumski, Gary

4204 E. Frontage Rd

Rolling Meadows, IL 60008-2520

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Bank of America

PO box 982234

El Paso TX 79948-2234

DIRECTV LLC

Attn: Bankruptcies

POB 6550

Greenwood Village CO 80155-6550

Jefferson Capital System

16 Mclelland Rd

Saint Cloud MN 56303

Macy's Card

PO Box 8113

Mason OH 45040

(d)Macy's Department Stores

PO Box 8218

Mason OH 45040

Portfolio Recovery

120 Corporate Blvd

Ste 100

Norfolk VA 23502

(d)Portfolio Recovery Associates LLC

POB 41067

Norfolk VA 23541-1067

TransUnion

555 West Adams Street

Chicago, IL 60661

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Ad Hoc Committee of Unsecured Creditors

(u)Brittney Gale Alaimo

(u)Christina Alston

(d)American Express National Bank

c/o Becket and Lee LLP

PO Box 3001

Malvern PA 19355-0701

(u)Michael P. Bailey

(u)Anitra Aytman Billops

(u)John K. Brigoli

(u)Stephen Craig Brown

(u)Alejandro Camacho

(u)Joseph Canfora

(u)Matthew Cantor

Page 13 of 24

(u)Dennis C. Cantrell

(u)Tiffany N. Comfort

(u)Patti M. Couture

(u)Dale & Gensburg, P.C.

(u)Shelly A. DeRousse

(u)Donald Dotson

(u)Dennis B. Estrada-Jimenez

(u)FactorLaw

(u)Pete Ferro

(u)Lindsay Fore

(u)John Fontaine

(u)Fund Recovery Services, LLC

(u)Gensburg Calandriello & Kanter, P.C.

(u)Rosemary Gonzalez-Lopez

(u)Sonja Hallmon

(u)Karensa Hutchens

(u)April D. Johnson

(u)Joseph Martinez
3746 Morning Glory Ave.
AK 99534-8000

(u)Kim L. King

(u)Latonya D. Kitchen

(u)Kutchins, Robbins & Diamond, Ltd.

(u)Little Owl Argon, LLC

(u)Theresa Madrigal

(u)Margon LLC

(u)Margon LLC, Mark Triffler, Pete Ferro and

(u)Mark Triffler Declaration of Trust

(u)Yolanda J. McKinney

(u)Morris Anderson & Associates, Ltd.

(u) Mathew V. Muniz

(u) Peraza Capital and Investment, LLC

(u) Jerardo Prado

(u) Steven Prescott

(u) Joseph N. Roberson

(u) Delilah Jasso Rodriguez

(u) Eric Shorter

(u) Dean Sipe

(u) Jennifer J. Solorio

(u) Felicia M. Spiller

(u) Sugar Felsenthal Grais & Hammer, LLP

(u) Sharon S. Tatumausbie

(u) The Cardinal Trust

(u) Mark Triffler

(u) Karen Vinson

(u) Lois West

(u) Samantha Rae Wilder

End of Label Matrix	
Mailable recipients	215
Bypassed recipients	56
Total	271

Label Matrix for local noticing
0752-1
Case 16-39655
Northern District of Illinois
Eastern Division
Fri Apr 23 10:10:28 CDT 2021

Argon Credit, LLC
200 W Jackson St Suite 900
Chicago, IL 60606-6986

Argon X LLC
200 W. Jackson Blvd.
Suite 900
Chicago, IL 60606-6986

Cardinal Trust
760 Village Center Dr. Suite 200
Burr Ridge, IL 60527-4507

William J Factor
The Law Office of William J. Factor, Ltd
1363 Shermer Road
Suite 224
Northbrook, IL 60062-4575

Fintech Financial, LLC
Attn: Mandi Vavra
101 Research Park Drive
Mission, SD 57555

(p)ARGON CREDIT
100 CANAL POINTE BLVD
SUITE 208
PRINCETON NJ 08540-7169

Fund Recovery Services, LLC
Sills Cummis & Gross, PC
Attn: V. Hamilton
600 College Road East
Princeton, NJ 08540-6636

Gary Zumski
4204 E Frontage Rd
Rolling Meadows, IL 60008-2520

Matthew T. Gensburg
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200 W Adams St., Ste. 2425
Chicago, IL 60606-5251

Karen R Goodman ESQ
Crane, Simon, Clar & Goodman
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Suite 3950
Chicago, IL 60603-4127

E. Philip Groben
Gensburg Calandriello & Kanter, P.C.
200 West Adams St., Ste 2425
Chicago, IL 60606-5251

Patrick S Layng
Office of the U.S. Trustee, Region 11
219 S Dearborn St
Room 873
Chicago, IL 60604-2027

Little Owl
322 E. Michigan St. Suite 302
Milwaukee, WI 53202-5005

Sara E Lorber
The Law Office of William J. Factor
105 W. Madison St.
Suite 1500
Chicago, IL 60602-4602

Margon
760 Village Center Dr. Suite 200
Burr Ridge, IL 60527-4507

Mark Trifflet Trust
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Lemont, IL 60439-7746

Office of the U.S. Trustee
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Chicago, IL 60604-2027

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Lars A Peterson
L&G Law Group LLP
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Suite 950
Chicago, IL 60604-2615

Princeton Alternative Fund
100 Canal Point Blvd Suite 208
Princeton, NJ 08540-7169

Princeton Alternative Fund (PAF)
100 Canal Pointe Blvd. Suite 208
Princeton, NJ 08540-7169

Princeton Alternative Income Fund, LP
c/o Sills Cummis & Gross, PC
Attn: V. Hamilton
600 College Road East
Princeton, NJ 08540-6636

Raviv Wolfe
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Valparaiso, IN 46385-9106

Peter J Roberts
Cozen O'Connor
123 North Wacker Drive
Suite 1800
Chicago, IL 60606-1770

Michael J. Small
Foley & Lardner LLP
321 North Clark Street
Suite 2800
Chicago, IL 60654-5313

Fund Recovery Services LLC

100 Canal Point Blvd Ste 208

Princeton, NJ 08540

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Fund Recovery Services, LLC

(u)Little Owl Argon, LLC

End of Label Matrix

Mailable recipients 25

Bypassed recipients 2

Total 27

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Case No. 16-39654
	)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
	)	Chapter 7
Debtors.)	
	)	Hon. Deborah L. Thorne
)	
	)	Hearing Date: May 20, 2021 at 9:30 a.m.
)	

**MOTION FOR ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY
RULE 9019 APPROVING SETTLEMENT WITH ERIC SCHNOSENBERG**

Karen R. Goodman (the “Trustee”), the chapter 7 Trustee in the above captioned cases, by and through her undersigned counsel, hereby submits this motion (the “Motion”) to this Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order approving settlement between the Trustee and Eric Schnosenberg (“Schnosenberg”). In support of the Motion, the Trustee states as follows:

PRELIMINARY STATEMENT

1. In December 2018, the Trustee (through her predecessor chapter 7 trustee, Eugene Crane) brought an adversary proceeding against seventeen (17) defendants asserting claims for, among other things, breach of fiduciary duty and avoidance and recovery of pre-petition transfers under chapter 5 of the Bankruptcy Code. The Trustee has settled or resolved claims against many of the defendants either piecemeal or through a semi-global settlement. The Trustee has reached a settlement with two of the three original founders of Argon Credit, LLC, Gary Zumksi and Raviv Wolfe. The Trustee has not reached a settlement with the third original founder, Berj Arakelian.

2. The Trustee has now reached a settlement with Schnosenberg, leaving only four (4) remaining defendants¹ in the insider adversary proceeding and resulting in gross settlement proceeds to the estates of \$573,500.00, including this settlement.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1408.

5. The predicate for the relief requested in this Motion is Bankruptcy Rule 9019.

BACKGROUND

I. General Case Background

6. On December 16, 2016 (the “*Petition Date*”), Argon Credit, LLC (“*Argon Credit*”) and Argon X, LLC (“*Argon X*,” together with Argon Credit, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the “*Bankruptcy Code*”).

7. On January 11, 2017, the Debtors’ bankruptcy cases were converted from cases under chapter 11 to cases under chapter 7.

8. Deborah K. Ebner was appointed the interim chapter 7 trustee of the Debtors’ estates, but resigned on April 17, 2017.

9. Eugene Crane was appointed as interim chapter 7 trustee on April 17, 2017 and confirmed by the Court on July 6, 2017.

¹ Those remaining defendants are Berj Arakelian, Sean Tomaszewicz, Blue Treble Solutions, LLC, and Barry Kostiner.

10. On July 11, 2017, the Court entered an order authorizing Eugene Crane, as chapter 7 trustee, to employ Freeborn as special counsel to, among other things, pursue chapter 5 causes of action on a contingency fee basis. (ECF No. 207).

11. On June 1, 2020, the Trustee was appointed as the successor chapter 7 trustee after Mr. Crane's resignation.

12. On July 30, 2020, the Court entered an order authorizing the Trustee to retain Freeborn on the same terms as previously approved with respect to Mr. Crane. (ECF No. 505).

II. The Insider Adversary

13. On December 14, 2018, Mr. Crane, the then-chapter 7 trustee, filed a complaint as case number 18-ap-00948 (the "*Insider Adversary*") against multiple defendants, including Schnosenberg for breach of fiduciary duty and avoidance and recovery of certain transfers under chapter 5 of the Bankruptcy Code. In particular, the complaint alleged that Schnosenberg breached his fiduciary to Argon Credit by, among other things, engaging in a scheme to funnel assets away from the Debtors and their creditors, improperly transferring assets to insiders, and knowingly submitting false or misleading financial reports to the Debtors' secured lender to conceal the transfer of Argon Credit's assets. The Trustee seeks millions of dollars in damages from the named defendants for breach of fiduciary duty.

III. The Proposed Settlement

14. Since the filing of the complaints, the Trustee (and her predecessor, Mr. Crane) have been engaged in discussions regarding the merits of the various claims against Schnosenberg and potential settlement. Settlement discussions proved logistically challenging given the number of total defendants, types of claims asserted, number of different counsel

involved, and various procedural postures with some defendants answering, others extending their deadlines, and another moving to dismiss.

15. After much back-and-forth, the Trustee and Schnosenberg have entered into a settlement agreement (the “*Settlement Agreement*”) fully resolving the claims asserted against Schnosenberg in the Insider Adversary. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

16. The relevant terms of the Settlement Agreement are as follows:

- Schnosenberg shall pay the Trustee the sum of \$45,000.00 (the “*Settlement Sum*”) in full satisfaction of the claims asserted against him in the Insider Adversary.
- The Settlement Sum shall be paid within 14 days of the order approving this Motion.
- Schnosenberg shall release the Debtors, their estates, and the Trustee from any and all claims, demands, obligations, debts, and causes of action of every kind or nature, in law or equity, whether now known or unknown, vested or contingency, arising on or before the date of the Settlement Agreement including, without limitation, all claims scheduled or filed against the Debtors’ estates and any claim arising from payment of the Settlement Sum pursuant to 11 U.S.C. § 502(h).
- The Trustee shall release Schnosenberg from any and all claims, demands, obligations, debts, and causes of action of every kind or nature, in law or equity, whether now known or unknown, vested or contingency, belonging to the Debtors or their estates as of the date of the Settlement Agreement including, without limitation, the claims for relief asserted or that could have been asserted in the Insider Adversary.
- Upon Court approval and the occurrence of the agreement’s effective date, the Trustee will dismiss Schnosenberg as a defendant in the Insider Adversary with prejudice.

RELIEF REQUESTED

17. By this Motion, the Trustee seeks entry of an order approving the Settlement Agreement pursuant to Bankruptcy Rule 9019(a).

18. Pursuant to Bankruptcy Rule 9019(a), “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Such settlements should be approved by a court if they are fair and reasonable and in the best interests of the debtor’s estate. *See Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994) (“In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.”) (internal citations omitted); *In re Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992) (holding that Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if “the settlement is in the best interests of the estate”); *In re Energy Coop., Inc.*, 886 F.2d 921, 926-27 (7th Cir. 1989) (providing that “[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate”); *In re Griffen Trading Co.*, 270 B.R. 883, 903 (Bankr. N.D. Ill. 2001), *aff’d*, 270 B.R. 905 (N.D. Ill. 2001) (citing *LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159, 161 (7th Cir. 1987)).

19. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. *See Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000) (“Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding – the expenses of administering the bankruptcy often consume most or even all of the bankrupt’s assets.”); *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy.”); *In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986).

20. The Court should grant a trustee’s request for approval of a settlement except in the very limited circumstance where a proposed settlement “falls below the lowest point in the

range of reasonableness.” *Energy Coop.*, 886 F.2d at 929; *Official Comm. of Unsecured Creditors of Artra Group, Inc. v. Artra Group, Inc. (In re Artra Group, Inc.)*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003) (same); *In re Rimsat, Ltd.*, 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997) (providing that the court is required only “to canvas the issues in order to determine whether the settlement falls below the lowest point in the range of reasonableness”); *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994).

21. In determining whether a proposed settlement is appropriate, neither an evidentiary hearing nor a rigid mathematical analysis is required. *Depoister*, 36 F.3d at 586, 588 (evidentiary hearing not required); *In re Energy Coop.*, 886 F.2d at 928-29 (rigid mathematical analysis of settlement values not required); *In re Am. Reserve Corp.*, 841 F.2d at 163 (mini-trial not required). Rather, the Seventh Circuit offers the following guidelines:

Central to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.

Am. Reserve Corp., 841 F.2d at 161 (citations omitted).

22. The proposed settlement with Schnosenberg satisfies this standard. Schnosenberg has agreed to pay the Debtors’ estates the sum of \$45,000.00 and waive all claims against the estates.

23. While the Trustee has asserted claims in the millions of dollars, the Trustee submits that this settlement is well within the reasonable range of possible litigation outcomes taking into account the potential defenses Schnosenberg may have and, in particular, the Trustee’s likelihood of recovering more against Schnosenberg.

24. The Trustee previously reached a semi-global settlement with other defendants which exhausted the funds remaining in Argon Credit’s director’s and officer’s liability

insurance policy. The remaining defendants, including Schnosenberg, must therefore pay any further costs of defense and settlement funds out of their own pockets. Schnosenberg has provided the Trustee with information sufficient to satisfy the Trustee that even if she were to obtain a substantial judgment against Schnosenberg, she would be unlikely to recover that amount in full.

25. Moreover, Fund Recovery Services, LLC (“FRS”), the Debtors’ pre-petition secured lender, has recently filed a complaint in the U.S. District Court for the Northern District of Illinois as case number 1:20-cv-05730 against many of the same defendants named in the Insider Adversary, including Schnosenberg. FRS’s complaint asserts numerous causes of action including claims under the Racketeer Influenced and Corrupt Organizations Act and seeks hundreds of millions of dollars in damages. This action further reduces the likelihood of the Trustee receiving a substantial recovery against Schnosenberg because, at a minimum, Schnosenberg will be forced to pay to defend this litigation as well and likely could not afford to repay such a substantial judgment to FRS.

26. The Trustee submits that the proposed settlement is appropriate under the circumstances because it allows the Trustee to avoid the costs of litigation which are likely to be substantial and avoid the uncertainty associated with litigation and a potentially difficult recovery. In short, the Trustee believes that the settlement maximizes the value of the estates while minimizing the expenses incurred.

27. Accordingly, the Trustee submits that the Court should approve the Settlement Agreement pursuant to Bankruptcy Rule 9019(a).

NOTICE

28. The Trustee has served notice of this Motion on the Debtors, U.S. Trustee, and all creditors pursuant to Bankruptcy Rule 2002 and stated that copies of the complete Motion may be obtained from counsel for the Trustee upon request. The Trustee submits that such notice is appropriate under the circumstances.

WHEREFORE, the Trustee respectfully requests that the Court enter an order: (i) approving the Settlement Agreement with Schnosenberg, and (ii) granting such other and further relief as this Court deems just and proper.

Dated: April 26, 2021

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Elizabeth L. Janczak
One of Her Attorneys

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Elizabeth L. Janczak, Esq.
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